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ALEXANDER L. STEVAS,
CLERK

Case Number 84-1909

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

BRIAN IVAN BROWN

Petitioner

v.

EARLE I. ERMAN and NEAL SUTHERLAND

Respondents.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Should plaintiffs' counsel be fully compensated for all time reasonably expended representing objecting plaintiffs in a class action in trial court, on a successful appeal and in subsequent proceedings?

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Brian I. Brown petitions this Court to issue a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals entered in this action on December 3, 1984. Petition for rehearing in the court of appeals was denied on January 22, 1985.

REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

The opinions of the courts below are unreported. The December 3, 1984 opinion of the Sixth Circuit Court of Appeals is reproduced in the appendix as are the November 23, 1983 order of the United States District Court for the Eastern District of Michigan and the February 7, 1983 order of the United States Bankruptcy Court for the Eastern District of Michigan.

STATEMENT OF THE GROUNDS ON WHICH SUPREME COURT JURISDICTION IS INVOKED

This petition for writ of certiorari is based on the judgment entered on December 3, 1984. A motion to file the petition for rehearing out of time was granted on December 21, 1984. The order denying rehearing was filed on January 22, 1985.

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1) which reads:

> Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:
>
> 1. By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATUTES AND REGULATIONS WHICH THIS CASE INVOLVES

This case involves the following statutes: 15 U.S.C. 1640(a)(3) and M.C.L. 445.911(2).

15 U.S.C. 1640(a)(3) provides:

> Civil Liability
> (a) . . . Any creditor who fails to comply with any requirement imposed under this chapter . . . with respect to any person is liable to such person in an amount equal to . . . (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

M.C.L. 445.911(2) provides:

> (2) Except in a class action, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

STATEMENT OF THE CASE

Petitioning attorney Brian I. Brown represented members of a class action who objected to a settlement of the class action in an adversary proceeding in bankruptcy court. After a successful appeal to district court petitioner sought attorney fees. His application was denied in bankruptcy court. A partial allowance was made on appeal to district court.

Petitioner began representing Robert and Constance Sheppard in August of 1981, when he filed a Chapter 13 bankruptcy proceeding on their behalf in the bankruptcy court in Flint, Michigan. Petitioning attorney Brian I. Brown then prepared a class action suit on the Sheppards' behalf against Remvest - Group Ten - Emil Coolidge mortgage companies and the LeBlanc family that ran the companies.

Group Ten Mortgage Corporation arranged

a $2,561.30 loan for the Sheppards from Emil Coolidge Mortgages, Inc. The fee for arranging the mortgage was $4,200. The Suit included claims under the Truth In Lending Act and Michigan's consumer protection act and usury law. A similar suit was prepared and filed by attorneys in Grand Rapids, Michigan. When the Remvest concerns filed Chapter 11 bankruptcy proceedings in Detroit, the Grand Rapids suit Mesler v. Remvest et al and the Flint suit Sheppard v. Group Ten et al were removed to bankruptcy court. Jurisdiction of the bankruptcy court over adversary proceedings is found in the bankruptcy code and bankruptcy court rules.

The Mesler suit was certified as a class action on May 25, 1982. The Sheppards subsequent motion to consolidate the actions was denied. The court found that the Sheppards were within the Mesler class so the actions had become merged.

The Sheppards then filed an appearance in the Mesler action through their attorney Brian I. Brown on June 21, 1982. Mr. Brown prepared objections to the proposed settlements and argued on behalf of the Sheppard objections on September 7, 1982. An appeal was taken from the bankruptcy court's approval of the class action settlements. Two subclass settlements corresponding to the two consolidated Chapter 11 proceedings were approved by the bankruptcy court. On appeal the district court vacated the settlements and remanded the cases to bankruptcy court on October 29, 1982 in an opinion reported as Sheppard v. Erman, 24 B.R. 560 (1982).

The Sheppards objected to the settlements as presented on November 26, 1982. The bankruptcy court approved the settlements. The Sheppards appealed and the district court affirmed. The Sixth Circuit

* There is no page 7.

also affirmed. The Sheppards have filed a petition for writ of certiorari to the Sixth Circuit contemporaneous with the instant petition. A request for attorney fees by attorney Brown after the successful appeal to district court was denied by the bankruptcy court. On appeal, however, the district court reversed and allowed a fee of $3,750 of the $35,300.41 requested. Remvest Federal Association, Inc. was liable for one half of the fee and Remvest Mutual Investment Trust was liable for the other half. Attorney Brown then appealed to the Sixth Circuit asking for full compensation for all time reasonably expended on behalf of the Sheppards. The Sixth Circuit affirmed the district court decision. Attorney Brown herein petitions this Court for writ of certiorari to the Sixth Circuit.

ARGUMENT

Review on certiorari should be granted in this case for special and important reasons. The Sixth Circuit Court of Appeals has sanctioned a decision that departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, moreover, the Sixth Circuit has decided a federal question in conflict with Hensley v. Eckerhart, 103 S.Ct. 1933 (1983).

In Hensley the dissenting opinion presented the position that the majority opinion required unnecessary explanation of attorney fee awards by the district courts. However, even the dissent allowed that reversal would be appropriate where "the award is so low as to provide clearly inadequate compensation to the attorneys on the case". The majority in Hensley commented, "It remains important for the dis-

trict court to provide concise but clear explanation of its reasons for the fee award." In remanding to the district court the Court stated, "we hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney fees (in civil rights litigation)." This Court was unable to affirm in Hensley because the district court's opinion did not properly consider the relationship between the extent of success and the amount of the fee award.

In the case before the Court the United States District Court for the Eastern District of Michigan stated in a bench opinion:

> These services were rendered between September 7 and October 29, 1982. I estimate, based upon my review of the file and the rather spartan nature of the papers filed by Brown, to have involved approximately 50 hours of lawyers time.

The court used an estimate even though counsel's time sheets were in the court file and even though opposing counsel

concluded on the record that 106.25 hours (Appendix Page 31) could arguably have been devoted to the successful appeal reported as Sheppard v. Erman, 24 B.R. 560 (1982).

If the time spent on the objections and the first successful appeal is limited to the period between filing an appearance in the adversary proceeding on June 21, 1982 and reviewing the favorable appeal decision with the clients Sheppard on October 30, 1982, petitioner's time expended was 133.25 hours not the 50 hours estimated by the district court.

Petitioner asserts that the Sheppard class action suit was merged into the Mesler suit; therefore, his time should be calculated from August of 1981 when he first consulted the Sheppards about the Group Ten - Remvest scheme. The time spent to October 30, 1982 was calculated to be 235.05 hours: this is the figure that was provided to opposing counsel and

the court in a letter dated November 15, 1983. Attorney fees at $95 per hour, mileage, and court costs come to $23,069.66. The district court only allowed $3750.

If petitioner prevails in the companion petition for writ of certiorari on behalf of the Sheppards then fees for the time subsequent to October 30, 1982 should be covered in a fee award.

The factors relevant to making an attorney fee award that were announced in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) were not mentioned by the district court in its opinion nor were they discussed at the hearing. Both the opinion and hearing transcript, November 21, 1983, are included in the appendix to this petition.

The twelve factors that were announced in the Johnson case are;

1. The time and labor expended;
2. The novelty and difficulty of the questions raised;

3. The skill required to properly perform the legal services rendered;
4. The attorney's opportunity costs in pressing the instant litigation;
5. The customary fee for like work;
6. The attorney's expectations at the outset of the litigation;
7. The time limitaitons imposed by the client or circumstances;
8. The amount in controversy and the results obtained;
9. The experience, reputation, and ability of the attorney;
10. The undesirability of the case within the legal community in which the suit arose;
11. The nature and length of the professional relationship between attorney and client;
12. Attorneys' fees awards in similar cases.

In Northcross v. Board of Education of Memphis Schools, 611 F.2d 624 (6th Cir. 1979), cert denied 447 U.S. 911 (1980) the court adopted an analytical approach in making attorney fee awards based on the number of hours expended on the case. The language used in Northcross is similar to that of Samuel R. Berger, Court Awarded Attorney's Fees: What Is Reasonable ?, 126 Penn. L. Rev. 281 (1977). Berger concludes that:

> A reasonable attorney fee is one that fully compensates lawyers for the full market value of their time and effort . . . It entails consideration of most of the factors listed by various courts but within an analytical framework that reflects private time-based fee setting.

In Northcross the court decided that "counsel for the prevailing party should be paid . . . for all time reasonably expended on a matter." 611 F.2d 624 @ 633. The Northcross court noted that if the "award is contingent upon success' and for an 'unpopular cause', these factors affect the market value of the services rendered. If the attorney 'only will be paid in the event of victory' the rate of compensation should be adjusted upward. "In developing areas of law . . . a substantial upward adjustment (is required) to compensate for risk." 611 F.2d 624 @ 638.

Under Northcross the district court is required to make a clear and adequate finding of fact on the record in order to set

a reasonable attorney fee. No such finding was made in this case nor was there a finding of the fair market value of counsel's services or consideration of a contingency factor. The court based it's fee award on an hourly rate of $75 per hour.

The Sheppards' attorney has been a member of the bar for eleven years. "The average attorney fee hourly rate ofr Michigan lawyers in private practice in 1980 was $70.76." Report on Economics of Law Practice, Michigan Bar Journal, Feb., 1982, p. 116. Using a rate of inflation of 10% per year the average rate for 1984 would be $103.50. In Northcross the court allowed $75.00 per hour for office services and $125 per hour for trial work. Over five years have passed since the Northcross decision. The percentage increase in attorney fees from 1976 through 1980 was reported to be 25.2% in the economics report cited above. Using the same rate of increase for the interven-

ing years, the 1984 rates would be $110.45 per hour and $166.36 per hour for office services and trial work. Counsel for class plaintiffs in Mesler requested $115 per hour in their petition of December, 1982. The award to petitioner here is so low as to be clearly inadequate compensation for petitioner's efforts.

The opinion of the district court cited Frankenstein v. McCrory Corp., 425 F. Supp. 762 (1977), where a New York district court allowed attorney fees to a plaintiff who objected to a settlement in a class action suit. In Frankenstein the court stated:

> While the court does not conclude that an objector to a class action settlement is properly awarded counsel fees if every case, where the objections filed produced a beneficial effect upon the progress of the litigation, the award of fees is appropriate. . . . In this action, the objector filed a formal Notice Of Intention to Appear and to object to the structure of the settlement. The objections raised, although ultimately overruled, were not frivolous and the presence of an objector represented by competent counsel transformed the settlement hearing

> into a truly adversary proceeding. The objections to this settlement caused this court to spend more hours analyzing and assessing the complex settlement agreement, and cast in sharp focus the question of the fairness and adequacy of the settlement to all members of the class.

The reasoning of Frankenstein also applies to the second appeal in the instant suit to the district corut, and the appeal to the Sixth Circuit. Full compensation for the 364.90 hours requested by the petitioner should be allowed.

The district court did not allow compensation for travel time from Mr. Brown's office near Flint to the bankruptcy court in Detroit for hearings and document filings. Appendix page 40. Travel time was allowed in McPherson v. School District #186, 465 F.Supp. 749 (S.D.Ill. 1978), a civil rights actiсn, the court stated in ruling on an attorney fee request by prevailing plaintiff's attorney:

> The fee statute clearly intends for

> an attorney to be compensated for all time reasonably spent on the case. This follows from the fact that a lawyer's time is his stock in trade. 465 F.Supp. 749 @ 758.

The McPherson court found compensation for travel time at a reduced rate appropriate. In Imprisoned Citizens Union v. Shapp, 473 F.Supp. 1017 (E.D.Pa. 1979) the court noted that for some functions no delegation of the task of traveling can occur nor can other billable legal work be performed while driving; therefore, full compensation for travel time was allowed.

OTHER THEORIES

Alternate theories of recovery by petitioner are the private attorneys general concept and the order of the bankruptcy court under which class plaintiffs' counsel received their fees.

The Truth In Lending Act at 15 U.S.C. 1640 provides that " in the case of any successful action to enforce the foregoing liability the costs of the action, together

with a reasonable attorney's fee as determined by the court" are to be awarded to the prevailing plaintiff.

> (T)he congressional goals underlying the Truth In Lending Act include the creation of "a system of 'private attorney generals' who will be able to aid the effective enforcement of the Act." Thomas v. Myers-Dickson Furniture Company, 479 F.2d 740 @ 748 (5th Cir. 1973)

In Postow v. OBA Federal Savings and Loan Association, 627 F.2d 1370 (D.C.Cir. 1980) the court in allowing attorney fees noted that:

> The legislation at issue here was specifically designed by Congress to be enforced through private citizens suits. D.Trp.No. 278, 93rd Congress 1st Session. 15 (1973)

The Michigan consumer protection act states at M.C.L. 445.911(2):

> A person who suffers loss as a result of a violation of this act may bring an action to recover actual damages . . . together with reasonable attorney's fees.

Both the Truth In Lending Act and the Michigan consumer protection act provide for

reasonable attorney fees for successful plaintiffs under a private attorney's general concert.

The merger of the Sheppard class action into the Mesler class action and the subsequent settlement constitutes ' a successful action' under the Truth In Lending Act. Reasonable attorney fees to counsel for the Sheppards are appropriate. The private attorneys' general legislation does not require appointment of counsel for recovery under the acts.

Additional authority for an award of attorney fees to petitioner is found in the 'Order for Certification of Class Action" in the Mesler matter dated May 25, 1982. The order reads in part:

> If you do not request exclusion on or before June 21, 1982 from the Plaintiff Class you may if you desire enter an appearance in the case through your own counsel. If you do not request exclusion and you do not enter an appearance through counsel of your own choosing you will be represented by the following counsel for the

Plaintiffs: Willis L. Ash, Jr. . . . James Booth Burr, Jr. . . . Thomas Koernke

Petitioner filed an appearance in the adversary case on June 21, 1982 in accord with the May 25 order. The Sheppards were therefore represented in the adversary matter by attorney Brown. The Sheppards filed objections to the proposed settlement and successfully pursued an appeal to district court.

The law firms representing the named class plaintiffs received an order allowing attorney fees in the amount of $174,685 and $14,670 expenses on January 26, 1983. On June 14, 1983 they received an order for further services in the amount of $34,200 plus $4,644.09 expenses. Petitioner Brown requested on November 21, 1983 a total award of $35,300.41 for attorney fees and expenses.

The authority for the awards to attorneys

Ash, Burr and Koernke was the May 25, 1982 order. That order clearly says if you do not request exclusion (the Sheppards did not) and you do not enter an appearance through counsel of your own chosing you will be represented by Ash, Burr and Koernke. The Sheppards entered an appearance through counsel of their choosing thus they were not represented by Ash, Burr and Koernke. The quoted portion of the notice of pending class action was the authority for the awards to class counsel and should also be equally valid authority for an award to petitioning attorney Brown.

In McGowan v. Credit Center of North Jackson, Inc., 546 F.2d 73 (5th Cir. 1977) attorney fees for work done on appeal was allowed.

> The Congressional goals underlying the Truth In Lending Act include the creation of a system of pr-vate attorney's general to aid in effective enforcement of the Act. . . . Since plaintiff prevailed on this

appeal the district court should also award additional attorney's fees to compensate him for this service. 546 F.2d 73 @ 77.

CONCLUSION

The decisions of the court of appeals and district court are in conflict with the Hensley standards for awarding attorney fees and the accepted and usual course of judicial proceedings as described in Hensley, Northcross and Johnson. A remand to district court for hearings on the fair market value of petitioners services and determination of the number of hours reasonably expended on the successful appeal is appropriate as is a ruling that the time spent subsequent to the successful appeal is compensable.

Date June 1, 1985

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No. 83-1835

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BRIAN I. BROWN
Plaintiff-Appellant,

v.

EARLE I. ERMAN and
NEAL SUTHERLAND,
Defendants-Appellees.

Filed Dec 3, 1984
John P. Hehman, Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BEFORE: LIVELY, Chief Judge; MERRITT, Circuit Judge: and PECK, Senior Circuit Judge.

PER CURIAM. This is an appeal by an attorney for objecting members of a sub-class in a class action who alleged that two settlements approved by the bankruptcy court and the district court were not fair and adequate. Two trustees in bankruptcy opposed the motion. The bankruptcy court denied the motion for attorney fees, but the district court allowed a portion of the requested fee upon finding that the attorney for the objecting class members

had rendered some non-economic benefit to the bankruptcy estate. The trustees in bankruptcy did not file a cross-appeal, but the attorney for the objectors has appealed the partial allowance, contending that it is totally inadequate.

No purpose would be served by reciting the history of this litigation. It is sufficient to note that the appellant has failed to point to any statutory entitlement for attorney fees in this case in view of the fact that his clients were given an opportunity to "opt out" of the class and failed to do so. The bankruptcy court appointed attorneys for each subclass within the class and these attorneys provided representation to all class members. The district court found that the appellant had rendered some non-economic benefit by calling to its attention procedural errors of the bankruptcy court and allowed a fee

for the reasonable time spent by the appellant on the procedural issues. However, the district court found that the appellant provided no other needed services and that the estate should not be burdened with additional fees.

Upon consideration, this court concludes that the district court did not abuse its discretion. The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT SHEPPARD and
CONSTANCE SHEPPARD,
Plaintiffs/Appellants,

v.

EARLE I. ERMAN and
NEIL SUTHERLAND,
Defendants/Appellees.

Civil No. 83-CV-0583-DT

Bankruptcy Nos. 82-01126-W
82-01312-W

Adversary No. 82-0518

ORDER ALLOWING ATTORNEY FEES

On February 17, 1983 Brian I. Brown, Esq., appealled from the Order Denying Compensation To Attorney Brian I. Brown entered in the Bankruptcy Court in the captioned proceedings on February 7, 1983. For reasons stated on the record on November 21, 1983 the order of the Bankruptcy Court is REVERSED and attorney fees are allowed Brian I. Brown, Esq. in the amount of $3,750. One-half of the fees are charged to Remvest Mutual Investment Trust

as an expense of administration and one-half of the fees are charged to Remvest Federal Association, Inc. as an expense of administration. SO ORDERED.

Dated: Nov 23, 1983 Avern Cohn

Detroit, Michigan United States
District Judge

BY _____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN BROWN,
Plaintiff
v. Civil Action
No. 83-0583
EARLE I. ERMAN, and
NEIL SUTHERLAND,
Defendants.
----------/

Proceedings had in the above-entitled matter before the HONORABLE AVERN COHN, Federal Court Judge, County of Wayne, State of Michigan, on Monday, November 21, 1983.

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Appearing on behalf of Defendant
Neil Sutherland

Elizabeth Diann Ferguson, CSR-1347

Detroit, Michigan
Monday, November 21, 1983
At about 9:00 a.m.

- - -

THE CLERK: Calling case number 83-0583, Brown versus Sutherland.

THE COURT: Do you have anything further to report? You have not, any of you, filed anything further other than Brown filing this schedule; is that correct?

MR. SHEFFERLY: Your Honor, Phillip Shefferly, appearing on behalf of Neal Sutherland, the appellee.

As your Honor may recall, the last hearing that the Court had requested the Petitioner Brown to submit the documentation to us within one week of the hours spent on the initial appeal.

When I did not receive that within two weeks, I contacted Mr. Brown by phone, and he advised me that it would be forthcoming. At that point, I indicated to him and confirmed it by letter to Mr. Brown, which I copied to the court file, indicating that inview of his failure to comply with the Court's request, that I would take the position at the hearing today he would not be entitled to any fees.

I would just simply indicate to the Court that in any event, I received a letter from Mr. Brown the following day. In the meanwhile, however, I had done a little bit of Mr. Brown's work myself in terms of computing the hours based on his time sheet, that, arguably, could have been devoted to that appeal.

My conclusion is that 106.25 hours could arguably have been devoted to that appeal. That does not mean to suggest to

the Court that we would consent to an award of fees for those hours; for example, some of those items include -- I believe there is an entry on October 21, 1982, for 16 hours spent at a status conference, including time for lunch and dinner.

I was at the same status conference and do not recall it lasting 16 hours.

THE COURT: Well, he added eight for you and eight for you to balance it out, perhaps.

MR. SHEFFERLY: Perhaps, your Honor. By way of example, there is another one on October 8, 1982, it shows five hours for filing a Notice and a Motion.

THE COURT: I understand.

Have you filed anything further?

MR. SHEFFERLY: Not other than the letter, your Honor.

THE COURT: Have you filed anything further?

MR. RYAN: No, your Honor, we have not.

THE COURT: Do you have anything further to say, Mr. Brown?

MR. BROWN: No, your Honor.

THE COURT: Okay.

MR. BROWN: Actually, I would like to summarize the situation as I understand it.

The Court asked that I make a summary or a division of the hours and decide -- and indicate how many hours were spent up to the point of successful appeal; after that point, then, the hours were to be deleted.

I made calculations, deleted the time and expenses from that point on; and sent a letter to Mr. Shefferly and a copy to Mr. Hurschber and a copy to the Court.

THE COURT: Is that it?

MR. BROWN: No.

Before Mr. Shefferly's letter that he sent, I did talk to him on the phone and told him that -- I gave him the numbers over the telephone; and I told him that I had prepared a letter over the weekend. Before that, however, my typist was at the time, she was in the hospital; and that I would be getting a letter out to him within a day or so.

In fact, the letter was on its way to him when I received his letter.

THE COURT: Okay.

Gentlemen, this case has involved far too much judicial time and lawyers' time. There is a line someplace, a lot of sound and jury, signifying nothing. Almost nothing, would be appropriate.

I am going to do something that I don't often do: I am going to dispose of this matter in the way that I think appropriate. And if I am wrong, then I am wrong.

* There is no page 35.

This is an appeal from an Order of Bankruptcy Court on February 7, 1983, denying an applicaiton for attorney fees by Brian I. Brown, attorney for Constance and Robert Shepperd.

Briefly described, the bankruptcy proceeding involved a reorganization of two companies engaged in second mortgage financing using funds borrowed from numerous individuals.

These companies used the funds to make second mortgage loans. The Shepperds were second mortgage borrowers while Brown represented the Shepperds in a variety of ways during the course of the bankruptcy proceedings. The only meaningful contribution he made to these proceedings was the filing of objections to the settlement of a class action by the second mortgageor.

The objections to the settlement were filed on September 7, 1982. These objec-

tions to the settlement were rejected by the bankruptcy judge. On appeal, on an appeal filed September 9, the approval of the settlement was reversed by this Court in an Order dated October 29, 1982, and remanded to the bankruptcy court for a meaningful consideration of the terms of the settlement.

This effort by Brown made a meaningful non-economic contribution and conferred a meaningful non-economic benefit on the bankruptcy estate in assuring that a proper consideration after proper notice to all affected persons was given to the settlements.

See Mills versus Electric Auto-Light, 396 U.S. 375 (1970); City of New York versus Darlene Deleware, 440 Fed. Supp. 1132 (S.D. N.Y. 1977); Frankenstein versus McQuarry Corporation, 425 Fed. Supp. 762 (S.D.N.Y. 1977)

In denying Brown's application for attorney fees, the bankruptcy judge simply failed to recognize the non-economic benefits conferred by Brown's efforts on appeal.

Brown, in support of his appeal, has filed a schedule entitled "time sheet," which purport to enumerate Brown's services, travel time, and expenses, between August 1981, when he initially interviewed the Shepperds, through October 1983.

The schedule logs 364.90 hours devided into services prior to a second appeal of the approval of the settlement following the remand; services on the second appeal and hours related to the pending application for attorney fees.

It should be noted that the second appeal was dismissed on the grounds that the bankruptcy judge had properly approved the settlement.

No effort has been made by Brown to

separately describe the hours related to the objections to the settlement and the appeal which resulted in a reversal and remand.

These services were rendered between September 7, 1982, and October 29, 1982. I estimate, based upon my review on the file and the rather spartant nature of the papers filed by Brown, to have involved approximately 50 hours of lawyers' time.

In the past, I have used $75.00 an hour as a benchmark hourly rate. Nothing has come to my attention which exist that Brown is entitled to any higher hourly rate.

This matter can be demonstrated by examination of the files; has already involved far too much of lawyer time and Court time; occassioned in part by the bankruptcy judge's approach; in part, by Brown's stubborness and lack of under-

standing of the relevant issues; and in part, by the shotgun response and stubbornness of the lawyers for the trustees and thoses involved in the class action.

To remand this matter for further consideration to the bankruptcy judge, who has recently become a federal judge, would unduly prolong the matter as well as resulting if further expense to all concerned.

I am satisfied that Brown is entitled to the fee of $3750.00 for his meaningful services to the proceedings relating to the settlement of the class action; and because of the manner in which the settlements were handled, his fees are to be paid as an expense of administration one half by Remvest Mutual Investment Trust; and one half by Remvest Federal Association, Inc.

There is to be no reimbursment for travel time or for expenses incurred.

The expenses incurred are diminimous; the travel time results from Brown's choice of office location.

No authority has been cited for allowing travel expenses under such circumstances; and an appropriate Order will be entered by the Court.

I thank you, gentlemen, and I hope it is the last time that I see you on this matter.

MR. RYAN: Thank you, your Honor.

MR. BROWN: Thank you, your Honor.

MR. SHEFFERLY: Thank you, your Honor.

- - -

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF:

REMVEST MUTUAL INVESTMENT TRUSE
Case No. 82-01126-W
REMVEST FEDERAL ASSOCIATION, INC.,
Case No. 82-01313-W
Debtor.
_____/

ORDER DENYING COMPENSATION
TO ATTORNEY BRIAN I. BROWN

At a session of said Court held in the City of Detroit, County of Wayne State of Michigan on February 7, 1983

PRESENT: HON. GEORGE E. WOODS, Unites States Bankruptcy Court Judge

This matter having come on to be heard upon the Application for Fees of Brian I. Brown, Attorney, and the Court having held a Hearing on December 13, 1982, and the Court having made the following findings:

1. The request by Brian I. Brown did not comply with the requirements allowing compensation under 11 USC § 506(b) of the Bankruptcy Code.

2. That the Court had never entered

an Order appointing him to represent any party in interest in the Estates of the above-captioned Debtors.

3. That the services provided by Brian I. Brown were of no economic benefit to the Debtors' Estates.

4. That the actions by Brian I. Brown did not help in preserving the assets of either Debtors' Estate.

5. That the actions by Brian I. Brown caused a substantial cost and burden on the Debtors' Estates.

6. That Attorney Brian I. Brown had no relation to the Debtor REMVEST FEDERAL ASSOCIATION, INC.

7. That the Time Sheets submitted by Attorney Brian I. Brown should be stricken for lack of proper documentation

NOW, THEREFORE:

IT IS HEREBY ORDERED that the Application for Fees by Attorney Brian I. Brown be denied for the reasons set forth here-

in above.

GEORGE E. WOODS

UNITED STATES BANKRUPTCY COURT
JUDGE

A TRUE COPY

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

/s/

Deputy Clerk

7 FEB 1983

No. 83-1835

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BRIAN I. BROWN,
Plaintiff-Appellant,

v.

ORDER

EARLE I. ERMAN and
NEIL SUTHERLAND,
Defendants-Appellees.

_____/

BEFORE: LIVELY, Chief Judge; MERRITT, Circuit Judge; and PECK, Senior Circuit Judge.

The appellant Brian I. Brown has filed a petition for rehearing directed to the disposition of this appeal by per curiam opinion filed on December 3, 1984. Upon consideration fo the petition for rehearing this court concluded that it did not overlook or misapprehend any fact or issue of law presented in this appeal.

Accordingly, the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

JOHN P HEHMAN /
Clerk

NUMBER 83-1835

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BRIAN I. BROWN,
Plaintiff-Appellant,

vs

EARLE I. ERMAN, CHAPTER 11 TRUSTEE FOR REMVEST MUTUAL INVESTMENT TRUST, AND NEAL SUTHERLAND, CHAPTER 11 TRUSTEE FOR REMVEST FEDERAL ASSOCIATION, INC.,
Defendants - Appellees.

MOTION TO FILE PETITION FOR REHEARING OUT OF TIME

(Clerk's Stamp) FILED DEC 2, 1984
JOHN P. HEHMAN, Clerk

(Clerk's Stamp) MOTION GRANTED
ENTERED BY THE CLERK
PURSUANT TO RULE (4F)
SIXTH CIR. RULES.
JOHN P. HEHMAN
CLERK

Appellant moves this court to file his Petition For Rehearing Out Of Time stating as follows.

1. The court's decision was entered on December 3, 1984.

2. A combination of Christmas mail

and counsel's attendance at an out of town conference resulted in his receipt of the decision on December 9, 1984.

3. Appellant's petition for rehearing was mailed on December 17, 1984 14 days from the date of the decision.

4. Rule 40(b) provides that petitions for rehearing shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs.

5. Rule 31(b) provides for filing an original and three copies with the clerk and Rule 25 deems briefs to be served when mailed.

6. The clerk of the sixth circuit states that the petition is served when received at the sixth circuit offices.

7. Appellant, therfore, moves this court to allow his petition for rehearing to be filed out of time.

Date 12/19/84

Brian I. Brown
Attorney At Law
Burton, Michigan